

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JACOB BEN-ARI, PH.D.,

Petitioner,

v.

CHARLES G. JOHNSON, et al.,

Respondents.

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Civ. No. 16-3354 (JMV)

MEMORANDUM AND ORDER

Petitioner, Jacob Ben-Ari, Ph.D., is an immigration detainee currently detained at the Essex County Correctional Facility in Newark, New Jersey. He is proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 (ECF No. 1) and requests permission to proceed *in forma pauperis* (ECF No. 1-2).

The proper sole respondent in this case is Charles Green, who is the warden of the Essex County Correctional Facility. *See Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004). Therefore, petition will be dismissed with prejudice as to respondent Charles G. Johnson; and Charles Green shall be added as the sole respondent. *Id.*

In his federal habeas petition, Petitioner challenges his current immigration detention, which he alleges has six months without a bond hearing. “Federal courts have habeas jurisdiction to examine the statutory and constitutional bases for an immigration detention unrelated to a final order of removal.” *Ufele v. Holder*, 473 F. App’x 144, 146 (3d Cir. 2012) (citing *Demore v. Kim*, 538 U.S. 510, 517-18 (2003)); *see also Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 226 (3d Cir. 2011). In accordance with Rule 4 of the Rules Governing Section 2254 Cases, applicable to § 2241 cases through Rule 1(b) of the Rules Governing Section 2254 Cases, this Court has screened the habeas petition for dismissal and determined that dismissal without an answer and

the record on this issue is not warranted. In addition to any arguments that Respondent may make in the answer, Respondent shall specifically address what impact, if any, *Chavez-Alvarez v. Warden York Cnty. Prison*, 783 F.3d 469 (3d Cir. 2015), has on the habeas petition.

Accordingly, **IT IS** this 18th day of July, 2016,

ORDERED that Petitioner's application to proceed *in forma pauperis* is GRANTED; and it is further

ORDERED that the habeas petition is DISMISSED WITH PREJUDICE as to respondent Charles G. Johnson; and it is further

ORDERED that the Clerk of the Court shall add Charles Green, the warden of the Essex County Correctional Facility, as the sole respondent in this matter; and it is further

ORDERED that the Clerk shall serve a copy of the Petition (ECF No. 1) and this Order upon respondent Charles Green by regular mail, with all costs of service advanced by the United States; and it is further

ORDERED that the Clerk shall forward a copy of the Petition (ECF No. 1) and this Order to the Chief, Civil Division, United States Attorney's Office, at the following email address: USANJ-HabeasCases@usdoj.gov; and it is further

ORDERED that within forty-five (45) days of the date of the entry of this Order, Respondent shall file and serve an answer which responds to the allegations and grounds in the Petition and which includes all affirmative defenses respondent seeks to invoke, in addition to any other arguments respondent may make, the answer shall specifically address what impact, if any, *Chavez-Alvarez v. Warden York Cnty. Prison*, 783 F.3d 469 (3d Cir. 2015) has on the Petition; and it is further

ORDERED that Respondent shall file and serve with the answer certified copies of all documents necessary to resolve Petitioner's claim(s) and affirmative defenses; and it is further

ORDERED that within thirty (30) days of receipt of the answer, Petitioner may file a reply to the answer; and it is further

ORDERED that within seven (7) days of Petitioner's release, by parole or otherwise, Respondent shall electronically file a written notice of the same with the Clerk; and it is further

ORDERED that the Clerk of the Court shall serve a copy of this Order upon Petitioner by regular U.S. mail.

s/ John Michael Vazquez
JOHN MICHAEL VAZQUEZ
United States District Judge